IN THE

# Supreme Court of the United States

OCTOBER TERM, 1977

## No. 77-1469

WILFORD D. CARTER,

Petitioner,

versus

L. E. HAWSEY, JR., Judge
14th Judicial District Court
Division F,

Respondent.

## PETITION FOR A WRIT OF CERTIORARI TO THE 14th JUDICIAL DISTRICT COURT OF LOUISIANA

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Petitioner prays that a writ of certiorari issue to review the judgment herein of the 14th Judicial District Court of the State of Louisiana entered in the above entitled case on December 8, 1977, petition for writs of certiorari to the Court of Appeal denied February 6, 1978 and petition for writs of certiorari to the Louisiana Supreme Court were denied February 17, 1978.

## JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (3), and the petitioner claims that his conviction for civil contempt was obtained in violation of rights guaranteed to him by the constitution of the United States. The judgment of the 14th Judicial District Court was entered on December 8, 1977. The Third Circuit Court of Appeal of Louisiana denied writs on February 6, 1978. The Supreme Court of Louisiana granted petitioner stay of the execution of sentence for sixty (60) days to seek review of the decision in this court.

## CONSTITUTION PROVISIONS INVOLVED

United States Constitution, Amendment V

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation".



United States Constitution, Amendment VI

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

United States Constitution, Amendment XIV

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

## QUESTIONS PRESENTED

1. Whether, in the circumstances of this case, the Trial Judge could not impartially sit in judgment of contempt charges against the petitioner, should he have recused himself.

2. When an alleged contempt has been committed by an attorney in the presence of the trial judge and the

trial judge proceeds by rule to show cause to punish for contempt whether, due process requires that the attorney be given an opportunity to employ counsel, subpoena witnesses, and prepare a defense, consistent with the Sixth Amendment guarantee of effective assistance of counsel and the Fourteenth Amendment's guarantee of due process of law?

3. May a conviction for contempt be sustained where the trial judge did not give contemnor timely notice of the specific conduct that forms the basis of the contempt prior to the hearing of the contempt rule, and where the trial judge never in his contempt proceedings stated the specific contumacious conduct that forms the basis of the contempt charge?

4. Whether the obstructive conduct of petitioner which forms the basis of contempt charges can be punishable as contempt when said conduct occurred out of the court's presence and hearing while court was not in session or on recess?

## STATEMENT OF THE CASE

The petitioner, an attorney seeks review of the judgment of the 14th Judicial District Court of Louisiana, entered on December 8, 1977, convicting petitioner of civil contempt and imposing a sentence of One Hundred Dollars ($100.00) fine and twenty-four (24) hours in jail, and barred petitioner from practicing law in Division F of the 14th Judicial District Court of Louisiana. The contempt conviction arose out of events occurring during a discussion petitioner had with Judge L. E. Hawsey, Jr., in the Judge's chambers on the afternoon of December 7, 1977.



Petitioner Wilford D. Carter, was held in direct civil contempt of court for calling Judge L. E. Hawsey, Jr., a racist and allegedly calling Judge L. E. Hawsey, Jr., a "S.O.B." and a "Chickenshit" and allegedly saying to Judge L. E. Hawsey, Jr., "to give him back the damn papers."

On December 8, 1977, at about 10:45 a.m., Attorney Carter was served with a rule to show cause on the 8th day of December, 1977 at 2 o'clock p.m., why he should not be held in contempt of court because of his contumacious, insolent, and disorderly behavior toward Judge L. E. Hawsey, Jr., said behavior occurring in the Judge's chambers. The rule was signed by Judge L. E. Hawsey, Jr.

At the hearing, petitioner did not have benefit of counsel, opportunity to have witnesses present, or time to prepare a defense, appeared in open court before Judge L. E. Hawsey, Jr. Judge Hawsey conducted the direct examination of his two witnesses from the bench. The Judge never took the oath and testified, nor was it possible to cross examine the Judge, as he acted in the capacity of Judge.

Prior to the hearing, petitioner filed and argued motions for a continuance, prematurity, bill of particulars and motions to quash. Petitioner made a motion that Judge L. E. Hawsey, Jr., be recused. The motions were denied by Judge L. E. Hawsey, Jr.

After the Judges' two witnesses had testified the following colloquy occurred:

"THE COURT: All right, sir. Mr. Mancuso, would you mind getting my Code of Civil Procedure on the desk over there? Well, Mr. Carter, I join you in the feeling of embarassment and shame. When this matter occurred yesterday, I hoped that you would feel inclined to offer some explanation for your conduct or apologize to the Court, and I expected perhaps a phone call or something from you last night. I didn't get a call from you. I was very upset about this. I have never in my years as a lawyer and the few years I've had as a Judge, had such an experience. I know of no other Judge, certainly none of this Court, that has had a similar experience. I slept very little last night, and quite frankly said a few prayers, Mr. Carter. I came to work this morning about 6:00 o'clock or shortly thereafter, hoping again that I might hear from you, and I did not. I had hoped that when we came to Court this afternoon, you would show some sign of contrition or have a contrite heart, because as I told you earlier, I'm just ol' L. E. Hawsey, but I represent the Court, and I was required to do what I must do as a Judge, and I must tell you, Mr. Carter, this is the most distasteful thing for me. It's an embarrassment upon this Court, and I find that you are in contempt of Court, in direct contempt of Court as provided in Subsection 1 of Article 222 of the Code of Civil Procedure. That article provides that a direct contempt is contumacious, insolent, or disorderly behavior toward the Judge or an attorney or any other



officer of the Court tending to interrupt or interfere with the business of the Court or to impair its dignity or respect for its authority. Having found you in contempt of Court, it is also my unhappy duty to give you some punishment. I have considered this very seriously, Mr. Carter, I have listened to your — I guess we would call it speech — when I asked you if you had any explanation, and I guess your speech gave me the answer. Revised Statutes 13,4611 provides the punishment for contempt of Court. A direct contempt of Court committed by an attorney shall be a fine of not more than $100.00 or by imprisonment for not more than 24 hours, or both. Subsequent acts of contempt contain — or the penalty for subsequent acts of contempt are gradually increased. In my judgment, you are a disgrace to the bar that practices before this Court. You are sentenced to pay a fine of $100.00 and to serve 24 hours in the Calcasieu Parish Jail. Because of the remarks that you made in your explanation, you will be considered a person or persona non grata in Division F of this Court."

DIRECT EXAMINATION

BY THE COURT:

Q. Just have a seat in the witness stand, Mr. Van Norman. Would you please state your name, sir?

A. John L. Van Norman, III.

Q. Where do you live, Mr. Van Norman?

A. 3630 Cayton Road, Westlake, Louisiana.
Q. And what is your profession?
A. I'm an attorney.
Q. Do you practice here in Lake Charles?
A. I do.
Q. And how long have you practiced, sir?
A. Since December of 1973.
Q. Has all of that practice been before this court?
A. Yes, it has.
Q. Mr. Van Norman, were you in —

MR. CARTER: Excuse me, if it please the court, I'd like to ask, make an objection, I'd like to first of all ask that the Court consider a motion of recusation of the Judge in this matter on the grounds the Judge's interests, has interest in this matter and is a material witness.

THE COURT: The Court has received your motion.

It is denied.

Q. Mr. Van Norman, were you in the Judges' offices yesterday afternoon?
A. Yes, sir, I was.
Q. And at what time was that?
A. Approximately 4:30.
Q. Were you in my chambers?
A. I was in the secretary's office next to your chambers, Your Honor.
Q. All right. Were you standing, seated, or what?
A. Standing.
Q. How far from where you were standing — was anybody else present?



A. Your Honor, your secretary came in, Glenda did, and I don't know exactly what time.
Q. All right. Was I in my office?
A. Yes, Your Honor.
Q. Was anybody else there?
A. Mr. Carter.
Q. How far from where you were standing was Mr. Carter from you.
A. Ten to fifteen feet.
Q. And how far from you was I?
A. Across the desk a little bit further, approximately the width of the desk.
Q. Did you hear anything unusual while you were in that outer office?
A. Yes, sir, I did.
Q. What did you hear, sir?
A. Well, I heard an exchange between yourself and Mr. Carter. As I understand or what I was able to hear, I think Mr. Carter had a succession in which he was trying to have an administrator appointed, and there was some question about a bond and the sufficiency on the bond or the amount of the bond was not enough for yourself to sign it, and at that time, an exchange took place wherein Mr. Carter requested that he be given back his papers in a profane language, and that — he then used some other language and stormed out the door, Your Honor.
Q. Would you repeat for the Court the exact language that you heard?
A. To the best of my knowledge, I remember

hearing him say to give back his damn papers, and that Your Honor was a chicken shit for not signing the paper, and then there was some other verbal exchange which I can't really remember how it was said or what was said, but there was some more profanity said, and as he stormed out the door, he called Your Honor a racist and a bigot, if I'm not mistaken, and indicated that you didn't have to sign the God damn papers.

THE COURT: Thank you, sir.

Mr. Carter, would you care to question Mr. Van Norman?

DIRECT EXAMINATION

BY THE COURT:

Q. All right, would you state your name, please?
A. Glenda Rawlings.
Q. And where do you live, Mrs. Rawlings?
A. My address?
Q. Do you live in this parish?
A. Yes, sir.
Q. All right. By whom are you employed?
A. By you, Judge Hawsey.
Q. All right, and I believe you're my secretary. Is that correct?
Q. How long have you been my secretary, Mrs. Rawlings?
A. Ten years.
Q. Now, Mrs. Rawlings, were you at work yesterday?



A. Yes sir.
Q. Were you in the office at approximately the area of 4:15 or 4:30 yesterday afternoon?
A. Yes, sir, I was.

MR. CARTER: Excuse me, Your Honor, may I go get my other book out of the other room? I need the statute.

THE COURT: Certainly, we'll let you get the book. Would you like to use mine?

MR. CARTER: No, I'll get mine.

(Mr. Carter leaves courtroom momentarily and returns)

Q. During the time period, Mrs. Rawlings, were there any other persons in the office?
A. Mr. Van Norman was in my office, and Mr. Carter was in your office.

MR. CARTER: Excuse me, Your Honor, I apologize. I'd like to use your book. I've got the Criminal Procedure. I need this book right here.

THE COURT: Certainly, Mr. Carter.

Q. And I take it that I was also in the office?
A. Yes, sir.
Q. Did you hear any conversation between Mr. Carter and myself, and if so, what did you hear?

A. I heard — the first thing I heard was, you were trying to tell Mr. Carter that his bond was no good, and I didn't hear what was said, but you could tell it was — there was disruption going on, and he was wanting you to sign it anyway, and you told him that the bond was no good, you would not sign, and then I heard, the bond is no good, and then the next thing I can remember, I heard Mr. Carter call you a racist son of a bitch.

Q. All right. Did you hear anything else after that?

A. I heard you ask him to leave, and he left. He flew out of there, and that's all I can remember.

It should be noted that Mr. John Van Norman was a clerk of court before he started practicing law, and Mrs. Glenda Rawlings has been the Judge's secretary for 10 years.

After the contempt conviction petitioner was prohibited from practicing before Judge Hawsey's division of the court.

Petitioner filed an appeal to the Third Circuit Court of Appeal on December 16, 1977. Said appeal was dismissed with the court ruling that a judgment of contempt is not appealable.

Petitioner filed writs for certiorari with the Louisiana Court of Appeal, Third Circuit and Louisiana Supreme Court. On February 6, 1978 the Third Circuit



Court denied petitioner's writs for review. On February 17, 1978, the Louisiana Supreme Court by a 4 to 3 decision denied petitioner's writs for certiorari, prohibition or mandamus.

On February 28, 1978, petitioner attempted to have a client arraigned in Judge Hawsey's Division of the 14th Judicial District of Louisiana, when, after petitioner entered the courtroom, without warning and before petitioner said a word to Judge Hawsey, Judge Hawsey ordered the Calcasieu Parish Sheriff's Department to physically put petitioner out of the courtroom. The Sheriff's office carried out the Judge's orders and petitioner was put out of the courtroom and prevented from representing his client.

In his appeal for writs to the Court of Appeals and writs to the Louisiana Supreme Court, petitioner raised all of the issues presented in this petition, and some others as well. Specifically, he contends that under the Sixth Amendment he was entitled time to retain counsel to represent him, his due process rights were violated. Because he was not given a fair opportunity to present his defense, because the Judge did not give him adequate notice of the specific behavior and language that formed the basis for the contempt charge before hearing, because the Judge never stated in his notice of contempt what language was used by petitioner which formed the basis of contempt, and because the Judge could not impartially sit in judgment on the charge. The Supreme Court of Louisiana in refusing petitioner's writs for Mandamus to Judge L. E. Hawsey, Jr., to allow him to practice in the Judge's division of the court, said that in lieu of the

response of the trial judge, that he will permit the petitioner to practice in his courtroom without interference. Petitioner's application was moot. Petitioner still is not certain that he can practice before Judge Hawsey's division of the court. With respect to the other issues, petitioner's writs were denied.

## I.

## REASONS FOR GRANTING THE WRIT

**The holding of the lower court below that the trial judge could impartially sit in judgment on the contempt charge against the petitioner is clearly inconsistent with the decisions of this court on the question of judicial disqualification in contempt proceedings.**

The trial judge cited the petitioner for contempt in his office, he did not act to impose punishment until next day through a rule to show cause. Thus, there was no question as to the necessity of "instant punishment", after the trial judge could not impartially sit in judgment on the contempt charges, the petitioner's conviction should be reversed. *Mayberry vs. Pennsylvania*, 400 U.S. 455 (1971), *Taylor vs. Hayes*, 94 S.Ct. 2697 (1973). However, the Third Circuit Court of Appeal of Louisiana, and the Louisiana Supreme Court denied writs on the recusal issue, which is that patently inconsistent with the decisions of this court on the question of judicial disqualification in contempt proceedings.

It is well settled that the trial judge is disqualified to sit in contempt proceedings where he has become per-



sonally embroiled in controversy with the alleged contemnor, such as where he is an "activist" seeking combat, *Offutt vs. United States*, 348 U.S. 11 (1959), where he has been the victim of a "personal attack." *Mayberry vs. Pennsylvania, Supra*, where for any reason he may be biased against the alleged contemnor, *Johnson vs. Mississippi*, 403 U.S. 212 (1971), or where he has advanced an adversary posture with respect to the alleged contemnor. *United States vs. Meyer*, 462 F.2d 827 (1972). Where trial judge becomes embroiled in running controversy with counsel there was mounting display of unfavorable personal attitude by trial judge toward accused, his ability and his emotions, it appeared that marked personal feelings were present and that incidents of unseemly conduct had left "personal strings", thus, another judge should have been substituted for trial judge for purpose of friendly disposing of contempt charges against counsel. *Taylor vs. Hayes*, 418 U.S. 488 (1973).

The onimus and hostility of the trial judge toward the petitioner is demonstrated by his conduct and statements throughout the contempt proceedings and thereafter. To say the least, the interchanges between court and counsel during the trial were marked by expressions and revealed an attitude which plainly reflected the restraints of conventional judicial demeanor. *Offutt vs. United States, Supra*.

The effect of the trial judge's hostility toward the petitioner on his imposition of the sentence for contempt is graphically illustrated by the following colloquy:

"THE COURT: In my judgment, you are a disgrace to the bar that practices before this court. You are sentenced to pay a fine of $100.00 and to serve 24 hours in the Calcasieu Parish Jail. Because of the remarks that you made in your explanation you will be considered a person or persona non grata in Division F of this court."

The trial judge constantly prohibited petitioner from cross examining the Courts witnesses which is proof of the Judges hostility and his being personally embroiled in controversy with petitioner. During the contempt proceedings, the Judge's personal secretary testified against petitioner. After her direct examination the following interchange took place:

"THE COURT: There is one more thing I want to tell you, Mr. Carter, you have a lady on the stand, and I expect you to be courteous with this witness. If you use the same language that you used with Mr. Van Norman, I will find you in contempt today. Now you understand, sir?

MR. CARTER: No, Your Honor, I don't understand. What language?

THE COURT: Well, I don't know how to make it any clearer . . .

MR. CARTER: What language?



THE COURT: You are interrupting the Court, sir.

MR. CARTER: Your Honor, I'm not. I'm not just asking a question. What language are you talking, are you speaking of?

THE COURT: All right, I'll tell you what, if you use the same language that you used before, I'll find you in contempt today, sir. For instance calling the witness a liar.

MR. CARTER: Are you saying I cannot call a witness a liar in my cross-examination? Is that right?

THE COURT: You call the witness a liar, sir, and you're in contempt of this Court today.

MR. CARTER: What else can I not do, Your Honor — before I start my cross, I don't want to make a mistake.

THE COURT: You're a lawyer. You're supposed to know what to do.

MR. CARTER: Your Honor, I know of no statute that says I can't call the witness a liar.

THE COURT: Are you going to argue here all afternoon?

MR. CARTER: No, Your Honor, I'm just — I just want to be sure I don't say anything to of-

fend Your Honor. That's why I asked you, what else can I not say?

THE COURT: I'll tell you how you do it — you act like a gentleman, sir.

MR. CARTER: I've been — thank you, Your Honor.

This kind of interference by the Court happened throughout the hearing and prevented petitioner from effectively conducting his cross examination.

It cannot be doubted that in the case at hand, the contempt charges were "entangled with the Judge's personal feelings against the lawyer. *Offutt vs. United States, Supra*, marked personal feelings were present at least on the part of the trial judge, and the above examples clearly indicates, he was an "activist seeking combat."

Moreover, while the petitioner did not launch a personal attack against the trial judge, the fact remains that the trial judge perceived himself as the victim of such an attack. The trial judge should have recused himself because of the alleged contumacious conduct that petitioner is accused of, as a result of the fighting words that formed the basis of the contempt charges, that would anger the average person.

It should be noted that the contempt in the present case is similar to the *Mayberry* case, in that here as in the *Mayberry* case, petitioner was accused of calling the trial judge a "racist, son of a bitch, and chicken-



shit", and telling the trial judge that he did not have to sign the damn papers. Insults of that kind are apt to strike "at the most vulnerable and human qualities of a judge's temperament." *Bloom vs. Illinois*, 391 U.S. 194, *Mayberry vs. Pennsylvania*, 400 U.S. 455.

Whether the trial be federal or state, the course of due process is with the fair administration of justice. *Mayberry vs. Pennsylvania, Supra*.

Where the judge does not act the instant the contempt is committed, but waits until the next day to proceed by rule to punish for contempt, on balance it's generally wise where the marks of the unseemly conduct have left personal strings to ask a fellow judge to take his place.

In the instant case the trial judge could have asked one of five other judges to handle the contempt hearing to avoid the mere appearance of impropriety.

What Chief Justice Taft said in *Cook vs. United States*, 267 U.S. 517, 539, 45 S.Ct. 390, 395, is relevant here:

> "The power of contempt which a judge must have and exercise in protecting the due and orderly administration of justice, and in maintaining the authority and dignity of the court, is most important and indispensable. But its exercise is a delicate one, and care is needed to avoid arbitrary or oppressive conclusions. This rule of caution is more mandatory where the contempt charged has in it the element of

personal criticism or attack upon the judge. The judge must banish the slightest personal impulse to reprisal, but he should not bend backward, and injure the authority of the court by too great leniency. The substitution of another judge would avoid either tendency but it is not always possible. Of course where acts of contempt are palpably aggravated by a personal attack upon the judge in order to drive the judge out of the case for ulterior reasons, the scheme should not be permitted to succeed. But attempts of this kind are rare. All of such cases, however, present difficult questions for the judge. All we can say upon the whole matter is that, where conditions do not make it impracticable, or where the delay may not injure public or private right, a judge called upon to act in a case of contempt by personal attack upon him, may, without flinching from his duty, properly ask that one of his fellow judges take his place."

This writer submits that by reason of the due process clause of the Fourteenth Amendment a defendant in contempt proceedings should be given a public trial before a judge other than the one reviled by the contemnor. See *In Re Oliver*, 333 U.S. 257, 68 S.Ct. 499, *Mayberry vs. Pennsylvania*, 400 U.S. 455 (1971). In the present case that requirement can be satisfied only if the judgment of contempt is vacated so that on remand another judge not bearing the sting of these alleged slanderous remarks, and having the impersonal authority of the law, sits in judgment on the conduct of petitioner.



The court's bias is further manifested by his order prohibiting the petitioner from the further practice of law in Division F of the 14th Judicial District Court. The trial judge continued in his refusal to prohibit petitioner from practicing before his court, until petitioner filed a writ of mandamus to the Louisiana Supreme Court. The judge became so embroiled in the contempt proceedings until he had petitioner put out of the court by the local Sheriff's Department less than two months after the contempt hearing.

The Lake Charles American Press printed this particular article which is reproduced at length below:

This article was published in the Lake Charles American Press on February 28, 1978.

*CARTER EJECTED*
HAWSEY STICKS
BY BAN ORDER

Lake Charles attorney Wilford Carter was ordered escorted from the courtroom today, Feb. 27, when he tried to arraign a client before 14th Judicial District Judge L. E. Hawsey Jr.

Hawsey and Carter have been at odds since the judge found Carter in contempt of court for in-chambers remarks Carter made Dec. 7.

Carter was quoted as having called the judge a "racist."

Carter was fined $100 and ordered to serve 24 hours in jail. He has appealed that case, losing at the state Supreme Court level, but appealing now to the U.S. Supreme Court.

After his ruling in December, Hawsey said Carter would not be allowed to practice in Hawsey's division of court. The Louisiana Supreme Court did not rule on that part of Hawsey's order, saying it was not part of the sentence imposed upon Carter.

Last week during arraignment of a court-appointed client, Carter's law associate, Antoine Laurent, stepped in for Carter. Laurent pleaded the client not guilty by reason of insanity, and asked for a court-appointed sanity commission, saying, "Carter was of the opinion, after interviewing the client, that the client was suffering from mental incompetency."

Hawsey denied the sanity commission request, saying "I don't particularly have a high regard for Mr. Carter's opinion."

Today, Carter himself appeared before Hawsey to arraign another client. Court deputies were summoned by Hawsey and told to escort Carter from the courtroom.

Carter did not resist as he was taken away.



Later, Carter said he will now "at least try" to appear personally in court when he has a case pending before Hawsey. "I tried to cooperate with the court by sending my associate in my place. But when I did, the judge insulted me anyway, so I may as well appear myself and be insulted personally," Carter said.

Carter said he was not certain what would happen to the client he tried to arraign today.

Further proof of the Judge's bias is evidence by the various insults that the Judge continued to make about petitioner's professional ability several months after the contempt hearing. The Lake Charles American Press printed this article where insults by the Judge are at length below:

This article was published in the Lake Charles American Press on February 23, 1978.

JUDGE, ATTORNEY RIFT
WIDENED IN COURT

An open rift between a judge and local attorney continued in 14th Judicial District Court Tuesday during a hearing on the attorney's request for a sanity examination for a client.

Judge L. E. Hawsey Jr. denied a request by attorney Wilford Carter who was of the opinion that psychiatrists should be appointed to

examine a defendant Carter had been assigned to represent. The judge's ruling came after he told a law associate of Carter's that he (the judge) doesn't have a high regard for Carter's opinions.

Carter and Hawsey have had an open rift since the judge ruled the attorney in contempt of court for statements he made Dec. 7. Angered over the judge's refusal to okay a bond in a civil case, Carter called the judge a "racist."

The black attorney, who also represents District B on the Lake Charles City Council, accused the judge of treating him differently from white attorneys.

After an open-court hearing Dec. 8 on the incident, Hawsey found Carter to be in contempt of court. He fined the attorney $100 and sentenced him to serve 24 hours in jail.

Carter is appealing the case. His appeal was denied this week by the Louisiana Supreme Court, but he was given more time to appeal to the United States Supreme Court.

On Tuesday, Antoine Laurent, Carter's law associate, appeared for Carter before Judge Hawsey during regular felony arraignments. Laurent entered a plea of not guilty by reason of insanity for a defendant Carter had been appointed to represent.



Laurent then asked the judge to appoint a sanity commission composed of two psychiatrists to examine the defendant. Usually the appointments are made without question especially in cases when the defendants are indigents (cannot afford their own attorneys).

However, recently some district judges have been more select in appointments of sanity commissions. Judge Hawsey explained to Laurent that he would need some basis for the appointment. He said such commissions cost the taxpayers a minimum of $200 due to the $100 fee paid each doctor.

Laurent said the defendant had a history of mental problems stemming from the military. He said he had not interviewed the client himself but could only relate to the court what Carter had told him.

"Your honor," Laurent told the judge, "I am merely standing in for Mr. Carter, and Mr. Carter is of the opinion that the defendant is probably suffering from mental incompetency."

"Well, you know, Mr. Laurent, that I don't particularly have a high regard for Mr. Carter's opinion," the judge told the substitute attorney. He said that since the information on the defendant's history was coming "second hand" he would defer the appointment of a sanity commission.

> The judge said he would not appoint the commission Tuesday on "sketchy" information, but said he could always appoint one later. He suggested to Laurent that Carter obtain more information if the court is to "take a second look" at the matter.

If a judge demonstrates his biasness, as Judge Hawsey clearly did here, he is not capable of manifesting "that calm detachment necessary for fair adjudication," as required by *Mayberry vs. Pennsylvania, supra*.

Trial before an unbiased judge is essential to due process of law, *Bloom vs. Illinois*, 391 U.S. 194, 205 (1968) and the statement and behavior of the trial judge in the case at bar demonstrates beyond peradventure the bias and hostility that he bore toward the petitioner. For the Louisiana Supreme Court to deny writs is to disregard completely the application principles of law established by this court. The flagrant denial of due process that has thus been sanctioned calls for the granting of certiorari by this court and the reversal of the petitioner's conviction.

## II.

**This court should grant certiorari to determine the substantial question of whether due process requires, where a trial judge proceeds by rule to punish for alleged contempt committed in his chambers, where witnesses must be called to establish that the contempt took place, the contemnor must be given some opportunity to obtain counsel, subpoena witnesses in his behalf and be allowed full cross examination of opposing witnesses.**



The Fifth Amendment (as to the Federal government) and Fourteenth Amendment (as to the States) both provide that no person shall be deprived of life, liberty or property, without due process of law, and many states constitutions such as Article 1, Section 2 of the Louisiana Constitution of 1974, have similar provisions which provide that these due process provisions have been interpreted as requiring, in many situations that one who may be deprived of life or liberty in a court proceeding be afforded a reasonable opportunity to obtain counsel to represent him. The courts in the following cases which have in whole or in part, relied upon the provisions of due process clauses in determining that one charged with contempt of court is normally entitled to a reasonable opportunity to obtain counsel to represent him in proceedings for contempt of court.

*Cook vs. United States* (1925) 267 U.S. 517, 69 L.Ed. 767, *Re Oliver* (1948) 333 U.S. 257, 92 L.Ed. 682, *Re Green* (1962) 369 U.S. 689, 8 L.Ed.2d 198, *Holt vs. Virginia* (1965) 381 U.S. 131, 19 L.Ed.2d 290.

It is stated in *Cook vs. United States* (1925) *Supra*, that due process of law in the prosecution of contempt, except that of contempt committed in open court requires that the accused should be advised of the charges and have a reasonable opportunity to meet them by way of defense or explanation, including the assistance of counsel, upon request. Noting, that there was no need of evidence or the assistance of counsel

before imposing punishment where the contumacious conduct was committed in open court and instant action was required to preserve order in the courtroom, or to suppress disturbance, violence, physical obstruction, or to the court, the court stated that when the contempt is not in open court, there is no reason to dispense with the necessity of charges and the opportunity of the accused to present his defense at the contumacious conduct charged in the case at bar consisted of loud, profane language used in the Judge's chambers, accusing him of being a racist, taking place out of the presence of the court while the court was not in session or on recess. The proceeding was not conducted in accordance with the principles of the due process clauses where the alleged contemnor was not afforded an opportunity to employ counsel to represent him in the contempt proceedings.

In the instant case, petitioner, before the contempt hearing, filed a motion for continuance so that he may have time to obtain counsel and prepare a defense, trial judge denied his motion for continuance without consideration or discussion on that point. The following interchange took place between Court and petitioner:

> "MR. CARTER: I'd like to first file a motion for continuance — I was informed of this rule hearing today at 10:45 a.m., and I have not had time to consult or retain an attorney to represent me in this matter — and as the court is probably aware of any defendant has the right to counsel, and certainly that would also apply to an attorney when he's charged with con-



tempt, so I'd like for the court to consider this motion for continuance on those grounds.

THE COURT: All right. You may file your motion. Mr. Carter, you're being charged with direct contempt of this Court as set forth in Article 222 of the Code of Civil Procedure. Article 223 of the Code provides that the Court, if we find you guilty of such contempt, are to deal with you forthwith without any trial other than affording you an opportunity to be heard orally by way of defense and mitigation. The Court chose not to simply rule on your contempt, but to proceed by rule in Open Court as provided for cases where there has been constructive contempt; therefore, we are giving you more of an opportunity for review than the law requires. Your motion for continuance is denied. If you'll have a seat at counsel table, we'll proceed.

MR. CARTER: Well, I'd like to file another motion, if I may. I'd like to file a motion of — for prematurity based on Article Code — of Civil Procedure, Criminal Procedure 225 wherein the — let me read the article. The Court might not be aware of it. The article provides for 24 hour notice from the time, between the time of the service and the time of the hearing, and I've been served with this rule notice on today at 10:45, so I ask again that I'd like to file this prematurity, exception of prematurity to this action under Article 225.

THE COURT: Let your motion be filed, and the motion is denied.

MR. CARTER: I would further like to file a motion for a bill of particulars asking the Judge upon what statute or law is this proceeding based —

THE COURT: Article 222, Mr. Carter.

MR. CARTER: If you'll let me finish reading my article —

THE COURT: No, sir.

MR. CARTER: Well, I'd like to file it, then.

THE COURT: Let it be filed, and it is denied.

MR. CARTER: I'd further like to file a motion to quash on the grounds that the Court indicates that it's direct contempt, and the jurisprudence is to the effect that direct contempt is contempt in a Court that consists of words spoken or acts committed while the Court is in session or during its intermission, and I believe the grounds for this motion is the allegations are based on an out-of-Court in chambers utterance, so I'd like to file my motion to quash on those grounds, Your Honor.

THE COURT: Let your motion be filed. It is denied. Do you have any other motions you want to file?



MR. CARTER: In regards to the motion for bill of particulars, Your Honor, I request that the Court indicate, state with particularity the nature of the alleged contempt or disorderly behavior, behavior on my part, using the language which gives rise —

THE COURT: There is no provision for a bill of particulars in this case. Your motion for bill of particulars was denied. If you'll have a seat at counsel table, we'll proceed.

MR. CARTER: At this time, I'd like to approach the bench.

THE COURT: You may not do so, sir.

MR. CARTER: Thank you, Your Honor. I sure appreciate that.

The court said in *Re Oliver* (1948) 333 U.S. 257, 92 L.Ed. 682 due process of law requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to respond by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses in his behalf. The Court observed that if essential elements must be established by statement made by witnesses other than trial judge, and on testimony taken, the accused is entitled to counsel.

It is indicated in *Re Green* (1962) 369 U.S. 689, 8 L.Ed.2d 198, 82 S.Ct. 1114, that one charged with con-

tempt of court has the right, under the due process clause, to be represented by counsel in contempt proceedings where the alleged misconduct did not fall within the category of acts constituting contempt in open court necessitating immediate punishment to prevent demoralization of the court's authority.

Therefore, the instant contempt conviction must be reversed, since the contemnor was not afforded an opportunity to be represented by counsel in the proceedings, inter alia, and the alleged misconduct did not occur in open court, nor was immediate punishment necessary to prevent demoralization of the court's authority.

It is stated in passing, in *Holt vs. Virginia* (1965) 381 U.S. 131, 14 L.Ed.2d 290, 85 S.Ct. 1375, that the due process clause and the Sixth Amendment guaranteed a defendant charged with contempt of court for failing, as an attorney, to answer questions of the trial court as to whether he had anything to do with making his clients unavailable to be served with subpoenas in a pending case, the right to be represented by counsel, in contempt proceedings against him.

*Re Oliver, Supra*, "no person may be imprisoned for any offense, whether classified as petty, misdemeanor or felony unless he was represented by counsel at his trial." Of course *Argersinger vs. Hamlin*, 92 S.Ct. 2006 (1972) and *State vs. Cooly*, right to counsel in all misdemeanor cases where defendant may be sentenced to jail.



Further, reason that granting certiorari because petitioner did not have opportunity to adequately prepare his defense and cross examination of witnesses and subpoena witnesses in his behalf.

The Sixth Amendment provides that the accused in any federal prosecution has the right to have compulsory process for obtaining witnesses in his behalf. In *Washington vs. Texas*, 87 S.Ct. 1920 (1968) the Supreme Court held that the same right exists in state prosecutions as a result of the Fourteenth Amendment's due process clause.

In the present case petitioner did not have the opportunity to subpoena witnesses in his behalf, notwithstanding the availability of witnesses that would have testified in his favor had the trial judge granted petitioner's motion for continuance to subpoena witnesses.

Despite trial court's large discretion in matters granting continuance on discretionary grounds, such discretion may not be exercised arbitrarily, where a denial of a continuance found on good faith may deprive a litigant of his day in court, *Mathews vs. Mathews*, 220 So.2d 246.

A trial judge must always consider the effect a continuance will have on the administration of justice. The justice of the party is an important factor in deciding whether to grant a continuance. *Third Circuit Case, Lambert vs. Heirs of Adams*, 325 So.2d 331.

In the instant case trial Judge denied continuance notwithstanding, such denial resulted in preventing petitioner from having his day in court. The net results of the trial judge denial of continuance was to give the trial judge his day in court (the only witnesses that testified was on behalf of trial judge) and petitioner's defense was limited to cross examination which was stiffened by trial judge's interruptions.

The trial court's refusal of petitioner's motion for continuance in order that petitioner may have opportunity to obtain counsel, subpoena witnesses and prepare a defense is to disregard completely the applicable principles of law, established by this court. The flagrant denial of due process that has thus been sanctioned by the court of appeals and the Supreme Court of Louisiana calls for the granting of certiorari by this court and the reversal of the petitioner's conviction.

## III.

**This Court should grant certiorari to determine the substantial question of should a conviction of contempt be sustained; when trial judge did not give contemnor timely notice of the specific conduct that forms the basis of the contempt prior to the hearing of the contempt rule and where the trial judge in the contempt proceedings never stated the specific contumacious conduct petitioner allegedly committed.**

This court in *Taylor vs. Hayes*, 94 S.Ct. 2697 (1974) held that before an attorney is finally adjudicated in



in contempt and sentence after trial for conduct during trial, he should have reasonable notice of the specific charges and opportunity to be heard.

The conviction of Mr. Carter was pursuant to the procedure provided under article 225 of the Code of Civil Procedures of Louisiana, which provides as follows:

> "Except as otherwise provided by law a person charged with committing a constructive contempt of court may be found guilty thereof and punished therefor only after the trial by the judge of a rule against him to show cause why he should not be adjudged guilty of contempt, and punished accordingly. The rule to show cause may issue on the court's own motion, or on motion of a party to the action or proceeding, and shall state the facts alleged to constitute the contempt. A certified copy of the motion and of the rule to show cause, shall be served upon the person charged with contempt in the same manner as a subpoena, at least forty-eight hours before the time assigned for the trial of the rule.
>
> If the person charged with contempt is found guilty, the court shall render an order reciting the facts constituting the contempt, adjudging the person charged with contempt guilty thereof, and specifying the punishment imposed."

One might argue that this statute provides the procedure only for indirect contempt and petitioner was charged with direct contempt, however, it was necessary that two witnesses testified to establish the behavior that gave rise to the rule for contempt. Further the court selected the procedure to punish for the contempt, this writer submits that when he selected the rule to show cause procedure he was obligated to follow the law, to the letter, to include the required 48 hours notice of rule before the hearing and the requirement to state with specificity the facts alleged to constitute the contempt.

The Trial Judge had petitioner served with the following rule on December 8, 1977 at 10:45 a.m.

*RULE FOR CONTEMPT*

> "IT IS ORDERED that WILFORD D. CARTER, attorney, whose office address is 1025 Mill Street, Lake Charles, Louisiana, show cause, if any he has, at 2:00 o'clock P.M., December 8, 1977, why he should not be held in contempt of the dignity and authority of this Court because of his contumacious, insolent and disorderly behavior toward Judge L. E. Hawsey, Jr. said behavior occurring on December 7, 1977 at approximately 4:30 P.M. in the Judge's Chambers."

The notice only stated petitioner's behavior toward Judge Hawsey was contumacious, insolent and disorderly; hardly enough to enable petitioner to prepare a defense. Notice does not warn petitioner, that the rule was the result of calling the Judge a "racist", a



"S.O.B." or a "Chickenshit", or all those remarks. Therefore the notice, did not satisfy due process requirements.

In fact the first time petitioner found out he was to be charged with calling the Trial Judge a racist was when the Judge's witnesses gave their testimony during the hearing.

The trial judge's reasons for not being bound by the procedure of Article 225 was that petitioner had committed direct contempt and no rule was necessary, that he, Judge Hawsey, only gave petitioner an opportunity to have his day in court. The specific language the court used may be found on page 114 of Transcript, line 16, which states as follows:

> THE COURT: "I could have and did start to have Mr. Carter immediately placed under arrest and brought into a courtroom to be dealt with. I choose not to do that because probably of many reasons — I recognized that I was dealing with a young attorney who has not been practicing before this Court, and I take it before any Court very long, but I felt that he should have his day in Court, and I have attempted to give him his day in Court."

This writer submits that the rule of fair play in judicial proceeding and due process requires that once the trial judge decides to give contemnor his day in court, there must be a serious and genuine effort, on part of the trial judge, to give the accused a fair and impartial opportunity to defend himself. In the instant

case, fair and impartial justice would require that Judge Hawsey give Mr. Carter the forty eight (48) hour notice as is required under the Louisiana Code of Criminal Procedure, Article 225; to do otherwise would result in the appearance of impropriety on the part of the trial judge and damage the image and dignity of the court.

The questions, stated clearly and simply, is whether the trial judge may properly pick and choose the procedure to punish Mr. Carter for contempt and add his own personal procedure to give him (Trial Judge) all the advantages and deny contemnor an opportunity to effectively defend himself from the charges.

*Groppi vs. Lester*, 404 U.S. 504, 92 S.Ct. 587 held that before an attorney is finally adjudicated in contempt and sentenced he should have reasonable notice of the specific charges and opportunity to be heard in his own behalf. *Ex Parte Terry*, 128 U.S. 289 (1888) to hold contemnor in contempt without reasonable notice is inconsistent with the basic notion of fairness and is likely to bring disrespect among the court accordingly, notice should be afforded as a matter of course. These procedures are essential in view of the heightened potential for abuse posed by the contempt power.

Note, in the present case it was not until the contempt hearing had commenced that petitioner was told that he was charged with direct contempt in violation of Article 222 of the Code of Civil Procedure of Louisiana.



At the beginning of the hearing, petitioner did not know whether he had been charged with direct or indirect contempt, with civil or criminal contempt. Also, the trial judge conducted his direct examination of his witnesses from the bench, petitioner had no opportunity to have witnesses in his favor.

This court in *Bloom vs. Illinois*, 391 U.S. 202, 88 S.Ct. at 1482; and *Sacher vs. United States*, 343 U.S. at 12, 72 S.Ct. at 456 said the provisions of fundamental due process protection for contemnor accords with our historic notions of elementary fairness, reasonable notice and opportunity to be heard. *Offuett vs. United States*, 348 U.S. at 15, 75 S.Ct. at 14 the additional time and expenses possible involved will not seriously handicap the effective function of the court. *Bloom vs. Illinois, supra* due process cannot be measured in minutes and hours, in dollars and cents. For the accused contemnor facing a jail sentence, his liberty is valuable and must be seen as within the protection of the fourteenth amendment.

The trial judges' failure to give petitioner notice of specific charges that form the basis of the contumacious conduct and failure in his order of contempt to state with specificity what petitioner said to him that constituted the contumacious conduct is a disregard completely of the applicable principles of law established by this court which calls for this court granting certiorari and reversing the petitioner's conviction.

## IV.

**This Court should grant certiorari to determine the substantial questions of whether the**

**non-obstructive conduct of petitioner that formed the basis of the contempt charge can be made punishable as contempt, where conduct occurs in Judge's chambers out of presence or hearing of Court, while court was not in session or on recess.**

This court is asked to decide whether "Judge" should be given such broad meaning as to make it synonymous with "Court" or, within the words "Court" and "Judge", have two separate and distinct meanings. Broadly speaking, a court is a judicial tribunal engaged in the administration of justice and organized according to the law and sitting at fixed times and places for the administration of justice.

In the case of *U.S. Bland vs. Kennamer*, 6 F. 130 stated that in every court there must be at least three constituent parts: the actor, the reus, and the judex. The actor or plaintiff who complains of an injury done; the reus or defendant who is called upon to make satisfaction; the judex or judicial power who is to examine the truth of the facts to determine the law arising upon the facts, and if any injury appears to be done.

In the case of *Bosworth vs. Marshall*, 176 S.W. 348, 349, stated that a court is an organized body with defined powers meeting at certain times and places for the hearing and procedures of other matters brought before it and aided in this, its proper business, by its proper officers, namely, attorneys and counsels to present and manage the business, clerks to record and attest its acts and decisions and ministerial officers to



execute its command to secure order in its proceedings.

This writer submits that, in the instant case, a Judge sitting in chambers alone is not a court within the meaning of Article 222 of the Louisiana Code of Civil Procedure, La. Direct Civil Contempt Statute, or, as interpreted by the many courts of these United States to include this Supreme Court.

In the case of the *Louisiana Ed. Assn. vs. Richard Parish School Board*, 421 F.Supp. 973, it was stated that a plaintiff in a civil contempt proceeding bears the burden of proof that respondent violated some court order. An order to show cause, a widely used method if institution in a civil contempt proceeding, is merely a method of serving notice on the party allegedly in non-compliance with court order and does not shift burden of proof from petitioner to respondent. A civil contempt exists only when there is a disobedience of court order, to the damages of the other party. Contempt of court is a brave thing and the district court is not disposed to engage in strange construction to spell out theoretical or abstract violations, *Williams vs. Iberville Parish School Board*, 272 F.Supp. 542.

In the instant case, I know of no court order violated by Mr. Carter. Therefore, this Honorable Court should reverse and set aside the contempt conviction of Mr. Carter in the 14th Judicial District Court.

The jurisprudence is clear that the civil contempt of court is divided into "direct and indirect" or

"constructive contempt". The former is committed in the presence of the court and consist of words spoken of acts committed while the court is in session or during its intermission, which tend to embarrass justice, as *State ex rel Collins vs. Collins*, 110 So.2d 545, 737, LA. 111.

The case of *State ex rel Stewart vs. Reid*, 43 So. 447, stated that it is only when the offense is committed in the presence of the court, in actual session and within its vision and hearing, that proceedings by rule can lawfully be disposed with and the sending of a motion containing alleged defamatory matters in chambers, does not constitute a contempt of court, in the presence of the court, punishable in a summary matter.

In the instant case, the situation is similar to the *Stewart* case, since the petitioner allegedly made derogatory contumacious remarks to Judge Hawsey, while he was in his chambers, while court was not in session or in recess and remarks were not made in presence, view or hearing of the court.

Under statute providing that power to punish for contempt should not be construed to extend to any other cases other than the misbehavior of any person in the presence of the Court are "so near to" that to obstruct the administration of justice, the words, "so near to", have geographical not a casual meaning, and if the misconduct does not disrupt the quiet and order, or actually interrupt the court in the conduct in its business, the offender may not be summarily punished for contempt of court, Article 28 U.S.C.A., Section 459, 11 F.2d 713.



This writer suggests that the acts allegedly committed by Mr. Carter could not legally constitute contempt of court, not punishable as such within the meaning and purpose of the contempt statutes of this State or the United States.

Certiorari should be granted to determine whether statements made to judge in chambers out of the hearing or view of court, while court was not in session or on recess, can validly constitute contempt. And whether the word "Judge" is synonymous with the word "Court".

## CONCLUSION

For the reasons set forth herein, a writ of certiorari should be granted to review the Judgment of the 14th Judicial District Court of Louisiana.

Respectfully submitted,

ANTOINE Z. LAURENT
1025 Mill Street
Lake Charles, La. 70601
Telephone: (318) 436-9968

LOUIS B. GUIDRY
700 Enterprise Blvd.
Lake Charles, La. 70601
Telephone: 433-8201

ATTORNEYS FOR
PETITIONER

**CERTIFICATE OF SERVICE**

**STATE OF LOUISIANA**
**PARISH OF CALCASIEU**

**BEFORE ME, the undersigned authority, personally came and appeared WILFORD D. CARTER, who, being first duly sworn, stated under oath:**

**That he is the petitioner-relator in the above entitled and numbered cause for WRIT OF CERTIORARI;**

**That said petitioner has served the foregoing Application or WRITS to Judge L. E. HAWSEY, 14th Judicial District Court of Louisiana, Lake Charles, La. 70601, by mailing three copies thereof to him;**

**That all of the allegations of fact contained in the said petition are true and correct, to the best of his knowledge, information and belief.**

**/s/ Wilford D. Carter**
**WILFORD D. CARTER**

**SWORN TO AND SUBSCRIBED before me, Notary, on this 5 day of April, 1978.**

**/s/ Louis B. Guidry**
**LOUIS B. GUIDRY**
**Notary Public**

**APPENDIX**

**14TH JUDICIAL DISTRICT COURT**
**STATE OF LOUISIANA**
**PARISH OF CALCASIEU**

**IN THE MATTER OF**
**WILFORD D. CARTER**

**No. 77-5023**

***RULE FOR CONTEMPT***

**IT IS ORDERED that WILFORD D. CARTER, attorney, whose office address is 1025 Mill Street, Lake Charles, Louisiana, show cause, if any he has, at 2:00 o'clock P.M., December 8, 1977, why he should not be held in contempt of the dignity and authority of this Court because of his contumacious, insolent and disorderly behavior toward Judge L. E. Hawsey, Jr., said behavior occurring on December 7, 1977 at approximately 4:30 P.M. in the Judge's Chambers.**

**Lake Charles, Louisiana this 8th day of December, 1977.**

**/s/ L. E. HAWSEY, JR.**
**District Judge**

**[Filed: Dec. 8, 1977]**
**/s/ DEIDRE O. JOHNSON**
**Deputy Clerk of Court**
**Calcasieu Parish, Louisiana**

*MOTION FOR CONTINUANCE*

(Number and Title Omitted)

Defendant, Wilford D. Carter, appearing personally herein moves that the hearing of the captioned cause be continued indefinitely for the following reasons:

1.

Defendant was served with a copy of this rule at 10:45 A.M. on December 8, 1977, and he has not had time to consult and retain an attorney to represent him in this cause, nor sufficient time to prepare for the trial of this matter.

WHEREFORE, defendant prays that this matter be continued indefinitely.

/s/ WILFORD D. CARTER
WILFORD D. CARTER,
Defendant

*AFFIDAVIT*

STATE OF LOUISIANA

PARISH OF CALCASIEU

Wilford D. Carter, defendant herein being duly sworn deposed that he has read the foregoing motion and that all of the allegations therein are true and correct.

/s/ WILFORD D. CARTER
WILFORD D. CARTER,
Defendant



SWORN TO AND SUBSCRIBED before me, Notary, on this 8th day of December, 1977.

/s/ [ILLEGIBLE]
NOTARY PUBLIC

*ORDER*

Considering the foregoing motion,

IT IS ORDERED that this matter be continued indefinitely.

Lake Charles, Louisiana, this ____ day of December, 1977.

_____
JUDGE

[Filed: Dec. 8, 1977]
/s/ BESS C. WALLACE
Deputy Clerk of Court
Calcasieu Parish, Louisiana

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*MOTION TO QUASH*

(Number and Title Omitted)

Defendant, Wilford D. Carter, moves to quash the rule to show cause herein on the grounds that no act on the part of defendant was committed, nor words

spoken, while the court was in session, nor during an intermission.

WHEREFORE, defendant prays that the rule to show cause herein be quashed.

/s/ WILFORD D. CARTER
WILFORD D. CARTER,
Defendant

[Filed: Dec. 8, 1977]
/s/ BESS C. WALLACE
Deputy Clerk of Court
Calcasieu Parish, Louisiana

---

*EXCEPTION OF PREMATURITY*

(Number and Title Omitted)

Defendant, Wilford D. Carter, moves that the rule filed herein, ordering him to show cause at 2:00 o'clock p.m., December 8, 1977 be set aside on the grounds of prematurity for the following reasons:

1.

The rule to show cause was served upon defendant at 10:45 A.M., December 8, 1977; therefore, at least 48 hours have not elapsed from the time defendant was served to the time assigned for the trial thereof.



WHEREFORE, defendant prays that the rule herein be set aside on the grounds of prematurity.

/s/ WILFORD D. CARTER
WILFORD D. CARTER,
Defendant

[Filed: Dec. 8, 1977]
/s/ BESS C. WALLACE
Deputy Clerk of Court
Calcasieu Parish, Louisiana

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*MOTION FOR BILL OF PARTICULARS*

(Number and Title Omitted)

Defendant, Wilford D. Carter, appearing personally, moves for a Bill of Particulars, answering the following questions:

1.

Upon what statute or law is this proceeding based?

2.

If this proceeding is being conducted under any statute or law consisting of sections, parts, paragraphs or divisions of any kind, upon what specific section, part, paragraphs or divisions is this proceeding based?

3.

State with particularity the nature of the alleged contumacious, insolent and disorderly behavior.

WHEREFORE, defendant pray that he be furnished the particulars herein requested in order that he may be apprised of those facts which are necessary to properly prepare his defense.

/s/ WILFORD D. CARTER
WILFORD D. CARTER,
Defendant

[Filed: Dec. 8, 1977]
/s/ BESS C. WALLACE
Deputy Clerk of Court
Calcasieu Parish, Louisiana

---

NOTICE OF INTENTION TO APPLY TO LOUISIANA SUPREME COURT FOR WRITS OF REVIEW AND FOR STAY OF EXECUTION

(Number and Title Omitted)

TO THE HONORABLE FOURTEENTH JUDICIAL DISTRICT COURT, SITTING IN AND FOR THE PARISH OF CALCASIEU, STATE OF LOUISIANA, JUDGE LEMUEL E. HAWSEY, JR., PRESIDING:

YOU ARE HEREBY NOTIFIED that I, Wilford D. Carter, Attorney at Law, Esquire, will apply to the



Louisiana Supreme Court for Writs of Review from that certain judgment holding me in contempt of Court rendered herein on the 8th day of December, 1977; and I hereby respectfully request that the entire record of these proceedings be made a part of the record and lodged on appeal.

Further, I hereby move that the Judgment of this Court holding me in contempt of court and sentencing me to a fine of 100 dollars and to serve 24 hr in jail be stayed pending the disposition of my application for Writs of Review to the Louisiana Supreme Court.

Respectfully Submitted,
WILFORD D. CARTER
/s/ WILFORD D. CARTER

---

ORDER

Considering the foregoing:

IT IS ORDERED that the judgment sentencing the mover, WILFORD D. CARTER, ESQUIRE, to a fine of 100.00 and 24 hrs in the Parish Jail for contempt be, and it is hereby, stayed pending mover's application to the Louisiana Supreme Court for Writs of Review.

Further, the return date for filing said application shall be the 18th day of December, 1977.

Lake Charles, Louisiana December 8, 1977.

/s/ L. E. HAWSEY, JR.
DISTRICT JUDGE

[Filed: Dec. 8, 1977]
/s/ BESS C. WALLACE
Deputy Clerk of Court
Calcasieu Parish, Louisiana

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*MOTION FOR NEW TRIAL*

(Number and Title Omitted)

TO THE HONORABLE FOURTEENTH JUDICIAL DISTRICT COURT, SITTING IN AND FOR THE PARISH OF CALCASIEU, STATE OF LOUISIANA, JUDGE LEMUEL E. HAWSEY, JR., PRESIDING:

I, Wilford D. Carter, Attorney At Law, moves for a new trial on the ground that the ruling finding me in Contempt of this court would result in an injustice to me if permitted to stand, for the reasons and causes, now set forth, among others, to-wit:

New and material evidence that, notwithstanding the exercise of reasonable diligence by Wilford D. Carter, was not discovered before or during the trial, is available, and if the evidence had been introduced at



the trial it would probably have changed the ruling or judgment of guilty; the name and addresses of the witnesses who will testify as to the newly discovered evidence is: HARDY M. PARKERSON, ATTORNEY AT LAW ESQUIRE, 805 Alamo Street, Lake Charles, Louisiana, Said witnesses will testify in substance as follows: That the witness Mrs. Rawlings testified under oath that she overheard Wilford Carter say "racist S.O.B."; prior to her testimony under oath, she told Hardy Parkerson that she only heard Wilford Carter say "racist." The said witness is not beyond the processes of the Court.

The ends of justice would be served by granting defendant a new trial in that the witness has made contradictory statements.

/s/ WILFORD D. CARTER
Wilford D. Carter
Carter and Laurent
Attorneys at Law
1025 Mill Street
Lake Charles, LA 70601

STATE OF LOUISIANA

PARISH OF CALCASIEU

BEFORE ME, the undersigned authority, personally came and appeared WILFORD D. CARTER who being duly sworn stated that all the facts alleged in the foregoing motion are true and correct.

/s/ WILFORD D. CARTER
WILFORD D. CARTER

SWORN TO AND SUBSCRIBED before me this 12 day of December, 1977.

/s/ ULYSSES GENE THIBODEAUX
Notary Public

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*ORDER*

IT IS ORDERED that Judge Lemuel E. Hawsey, Jr., show cause before this court, on the ____ day of _____, at _____ o'clock ____.M., why the foregoing motion should not be granted.

Lake Charles, Louisiana, ____ day of _____, 1977.

_____
District Judge

I decline to sign this order for the reason that Mr. Carter conferred with Mr. Parkerson throughout the hearing. Mr. Carter had ample opportunity to learn any information that Mr. Parkerson had learned.

Lake Charles, Louisiana this 12th day of December 1977.

/s/ L. E. HAWSEY, JR.
DISTRICT JUDGE



*PETITION AND ORDER FOR APPEAL*

(Number and Title Omitted)

The petition of WILFORD D. CARTER, defendant in the above entitled and numbered cause, respectfully represents:

I

Petitioner desires to appeal suspensively from the final judgment rendered in the above cause on the 8 day of Dec., 1977.

II

Article 5, Section 10 of the Louisiana State Constitution of 1974 provides that: Except in cases appealable to the supreme court as otherwise provided by this constitution, a court of appeal has appellate jurisdiction of all (1) civil matters decided within its circuit. The above numbered and entitled cause has been designated as civil by the trial judge, accordingly defendant is entitled to appeal.

WHEREFORE, petitioner prays that he be granted an appeal in the above entitled and numbered cause returnable unto the Court of Appeal, 3rd Circuit, within the delays fixed by law upon his giving bond with good and solvent surety conditioned as the law directs.

/s/ WILFORD D. CARTER
WILFORD D. CARTER
Appellant

*ORDER*

Considering the foregoing petition, let WILFORD D. CARTER, be and he is hereby granted a suspensive appeal from the judgment rendered in the above entitled and numbered cause, returnable in the Court of Appeal, 3rd Circuit, State of Louisiana, on the 23rd day of December, 1977. Execution of Sentence was stayed December 8, 1977.

/s/ L. E. HAWSEY, JR.
JUDGE

[Filed: Dec. 19, 1977]
/s/ JOYCE WEBSTER
Deputy Clerk of Court
Calcasieu Parish, Louisiana

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*ORDER*

NUMBER 6497
COURT OF APPEAL, THIRD CIRCUIT
STATE OF LOUISIANA

IN THE MATTER OF
WILFORD D. CARTER

Appeal from the Fourteenth Judicial District Court, Parish of Calcasieu, State of Louisiana; Honorable L. E. Hawsey, Jr., District Judge, Presiding.



The petitioner, Wilford D. Carter, is hereby ordered to show cause by brief only on or before January 20, 1978, why his appeal in the above captioned matter should not be dismissed in that a contempt judgment is not a judgment from which an appeal may be taken.

THUS DONE AND SIGNED in Lake Charles, Louisiana, on the 11 day of January, 1978.

/s/ [ILLEGIBLE]
JUDGE
For The Court

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*MOTION TO DISMISS APPEAL*

(Number and Title Omitted)

Before DOMENGEAUX, WATSON and GUIDRY, Judges.

DOMENGEAUX, Judge.

This is an appeal from a judgment which found appellant, Mr. Carter, in direct contempt of court as set forth in LSA-C.C.P. art. 222(1). We issued, ex proprio motu, a rule to show cause why the appeal should not be dismissed in that a contempt judgment is not a judgment from which an appeal may be taken. The appellant has timely responded to the rule.

We dismiss the appeal.

As stated by this court in *Pasternach v. Lubritz*, 280 So.2d 352 (La. App. 3rd Cir. 1973), "[o]ur jurisprudence is established that a judgment holding one party in a lawsuit in contempt of court is not a judgment from which an appeal may be taken. A litigant's remedy in such a case is to apply to this court for supervisory writs." (citations omitted).

For the foregoing reasons, the appeal is dismissed. All costs of the appeal are assessed to appellant.

APPEAL DISMISSED.

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NO. 6527
COURT OF APPEAL, THIRD CIRCUIT
STATE OF LOUISIANA
Lake Charles

IN THE MATTER
OF
WILFORD D. CARTER

In re: Wilford D. Carter

Applying for Certiorari, or writ of review to the 14th Judicial District Court, Parish of Calcasieu, State of Louisiana



WRIT DENIED: February 6, 1978

We find no error or abuse of discretion in the adjudication of Contempt of Court and the imposition of fine and imprisonment. The application is accordingly denied.

By denying this writ application, we are in no way approving the statement of the District Judge nor his authority for making same, following imposition of sentence, that the applicant herein will be considered *persona non grata* in Division F of the 14th Judicial District Court. The record shows that this comment formed no part of the punishment imposed.

/s/ JED

/s/ ELGJr.

I concur in the denial of the writ. However, I add the observation that I see no objection to the trial judge's declaring relator *persona non grata* in the trial division where relator was contemptuous, at least for a limited period of time.

/s/ JCW

SUPREME COURT OF LOUISIANA
NEW ORLEANS, 70112

IN THE MATTER OF
WILFORD D. CARTER

February 17, 1978

NO. 61,443

In re: Wilford D. Carter, applying for writs of certiorari, prohibition or mandamus

(Parish of Calcasieu)

Writ denied. The contempt adjudication does not purport to prevent the relator from practicing before Division "F". We find no error in the proceedings adjudicating the relator to have committed a direct contempt. However, the relator's motion for a stay within which to apply to the United States Supreme Court is granted and execution of the sentence is stayed for 60 days for that purpose.

/s/ AT JR

/s/ JWS

/s/ FWS

/s/ WFM

DIXON & DENNIS, J.J., would grant. The judge who was recused in chambers, should have recused himself from the trial on contempt.



CALOGERO, J., would grant on the recusal issue.

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
February 17, 1978

/s/ FRANS J. LABRANCHE, JR.
Frans J. Labranche, Jr.
Deputy Clerk

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SUPREME COURT OF LOUISIANA
NEW ORLEANS, 70112

IN THE MATTER OF
WILFORD D. CARTER

March 7, 1978

NO. 61,720

In re: Wilford D. Carter applying for writ of mandamus

(Parish of Calcasieu)

Writ refused. In view of the response of the trial judge, that he will permit the relator to practice in his courtroom without interference, this application is moot.

/s/ JWS

/s/ AT JR

/s/ WFM

SUMMERS, J., concurs in the denial on the ground that, in view of the response of the trial judge, the matter is moot.

DIXON, CALOGERO & DENNIS, J.J., are of the opinion the writ should be granted and the district judge ordered to permit applicant to appear and practice law in his division of court.

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans

March 7, 1978
/s/ FRANS J. LABRANCHE, JR.
Frans J. Labranche, Jr.
Deputy Clerk

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1469

WILFORD D. CARTER,
Petitioner,

versus

L. E. HAWSEY, JR., Judge
14th Judicial District Court
Division F,
Respondent.

## OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE 14TH JUDICIAL DISTRICT COURT OF LOUISIANA

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## AUTHORITIES CITED

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IN THE
SUPREME COURT OF THE UNITED STATES
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14th Judicial District Court
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Respondent.

# OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE 14TH JUDICIAL DISTRICT COURT OF LOUISIANA

## STATEMENT OF THE CASE

Petitioner was found in contempt of the Fourteenth Judicial District Court, Parish of Calcasieu, State of Louisiana, on December 8, 1977, as a result of his having called Judge L. E. Hawsey, Jr., Division F of that Court, by several derrogatory terms set forth in petitioner's brief. The contemptuous conduct took place in the office of Judge Hawsey while he was serv-

ing as duly appointed Order Signing Judge for the Court. Petitioner was in Judge Hawsey's office to see him in his official capacity as Order Signing Judge, and his contemptuous words were overheard by Judge Hawsey's secretary and another local attorney who was waiting his turn to present matters to the Judge in his capacity as Order Signing Judge.

Petitioner's contemptuous behavior was not dealt with on the spot, but rather, petitioner was ordered into Court the next day, was given an opportunity to explain his conduct, and was given a punishment for direct contempt.

Petitioner's complaint as to his being barred from further practice in Division F before Judge Hawsey is moot, as noted by the Louisiana Supreme Court in its Order dated March 7, 1978.

In his statement of the case, petitioner cited a portion of the transcript of the hearing of December 8, 1977, before Judge Hawsey, alleging that it shows bias against him on the part of the Judge. Those portions of the transcript, however, must be considered in light of other portion of the transcript which explain the comments made by the Court.

[Questioning by Mr. Carter.]

"Question: Mr. Van Norman, you're lying. Now, Mr. Van Norman, I don't know what type or how much affection or dignity you have, you know, I don't know if you realize —

The Court: Restrict your remarks to questions, Mr. Carter. Restrict your remarks to questions and answers.

Question: Mr. Van Norman, you did not hear me curse that Judge. Now, you're lying if you said you did. You did not hear me curse the Judge at all, because I didn't say one mumbling cursing word. Now, why is it that you stand, sitting on this bench and lying, saying you heard me curse him?"



Questioning Mr. Van Norman further, Mr. Carter said:

"Well, you're a good liar, I'll tell you that at this time."

Later, Mr. Carter, again questioning Mr. Van Norman, said:

"Mr. Van Norman, we both didn't expect what happened. I didn't expect you to come and lie in this Court."

## APPLICABLE STATUTES

Article 222 of the Louisiana Code of Civil Procedure defines direct contempt in pertinent part as follows:

"A direct contempt of Court is one committed in the immediate view and presence of the small court and of which it has personal knowledge, or a contumacious failure to comply with a subpoena or summons, proof of service of which appears of record.

Any of the following acts constitutes a direct contempt of court:

(1) Contumacious, insolent, or disorderly behavior toward the Judge, or an attorney or other officer of the court, tending to interrupt or interfere with the business of the court, or to impair its dignity or respect for its authority;

(2) Breach of the peace, boisterous conduct, or violent disturbance tending to interrupt or interfere with the business of the court, or to impair its dignity or respect for its authority . . . ."

Article 223 of the Louisiana Code of Civil Procedure provides for punishment of a direct contempt as follows:

"Any person who has committed a direct contempt of court may be found guilty and punished therefor by the court forthwith, without any trial other than affording him an opportunity to be heard orally by way of defense or mitigation. The court shall render an order reciting the facts constituting the contempt, adjudging the person guilty thereof, and specifying the punishment imposed."

Louisiana Revised Statutes 13:4611 provide for the punishment of contempt of court in pertinent part as follows:

"Except as otherwise provided by law:



(A) The Supreme Court, the Courts of Appeal, the District Courts, Juvenile Courts and the City Courts may punish a person adjudged guilty of a contempt of court therein as follows:

[1] For a direct contempt of court committed by an attorney at law, a fine of not more than $100.00, or by imprisonment for not more than 24-hours, or both . . . ."

During the course of the hearing afforded petitioner by Judge Hawsey, petitioner made an oral motion to have Judge Hawsey recuse himself. The recusation of Judges in civil trials is governed by Louisiana Code of Civil Procedure, Article 154, which provides as follows:

"A party desiring to recuse a Judge of a District Court shall file a written motion therefor assigning the ground for recusation. This motion shall be filed prior to trial or hearing unless the party discovers the facts constituting the grounds for recusation thereafter, in which event it shall be filed immediately after those facts are discovered, but prior to judgment. If a valid ground for recusation is set forth in the motion, the Judge shall either recuse himself, or refer the motion to another Judge or a Judge Ad Hoc, as provided in Articles 155 and 156, for a hearing."

## REPLY TO PETITIONER'S SPECIFICATION OF QUESTIONS FOR REVIEW

**Recusation**

As his first of four questions to be presented to this court, petitioner asks:

> "1. Whether, in the circumstances of this case, the Trial Judge could not impartially sit in judgment of contempt charges against the petitioner, should he have recused himself."

It is noted, initially, that petitioner did not raise the question of recusation as required by the Louisiana Code of Civil Procedure. The grounds for his motion to recuse were, or should have been, evident to him prior to the hearing, and he did, in fact, file several written motions at the hearing. He did not, however, file a written motion to recuse. It has been held by the Louisiana Supreme Court that the requirement that the motion be in writing is essential. In *State v. Crothers*, 278 So.2d 12 (La.Sup.Ct. 1973), the court refused to review the denial of an oral motion to recuse, saying:

> "The motion to recuse urged by defense counsel was not in writing as required by Louisiana Code of Criminal Procedure, Article 674. Therefore, the denial of the oral motion for recusal presents nothing for this court to review."

The recusal provision of the Louisiana Code of Criminal Procedure, Article 674, is the same provision as Article 154 of the Code of Civil Procedure.

We are involved here with a direct contempt. The Louisiana statute does not require that a direct contempt be committed in *open* court. In this case, the contemptuous conduct took place before the court in chambers and in the presence of not only the Judge, but other court personnel and another lawyer waiting to consult the court on business matters. The Louisiana Statute considers as direct contempt any "contumacious, insolent or disorderly behavior toward the Judge" without any restriction on whether the conduct is committed in open court or in chambers.



Judge Hawsey was acting in his official capacity as Judge of the Fourteenth Judicial District Court, Parish of Calcasieu, State of Louisiana, Division F, at the time of the contemptuous conduct and that conduct clearly constituted a direct contempt.

Louisiana Civil Code, Article 223, provides the procedure for punishing a direct contempt, in pertinent part, as follows:

> "A person who has committed a direct contempt of court may be found guilty and punished therefor by the court forthwith, without any trial other than affording him an opportunity to be heard orally by way of defense or mitigation. . . ."

In this case, the Trial Judge before whom the direct contempt was committed gave petitioner an opportunity to be heard orally by way of defense and mitigation. That opportunity followed the direct contempt by one day. That delay is not constitutionally forbidden and does not then require the referral of the matter to another Judge for hearing.

Petitioner has not complained of the constitutionality of the Louisiana Statutes defining direct contempt, the procedure for punishing or the punishment to be imposed. Rather, he complains only that in this case, the failure of the Trial Judge to recuse himself violated his constitutional rights.

The subject of contempt is one which does not lend itself to easy categorization. The facts of each case are all-important.

We are not here faced with an *Offutt* situation in which the Trial Judge and counsel become open adversaries over the course of a trial (*Offutt v. U.S.*, 348 U.S. 11, (1954) ), nor are we dealing with a *Mayberry* situation in which an individual grossly violates the decorum of the court in open session, apparently in an attempt to disrupt the orderly judicial process. (*Mayberry v. Pennsylvania*, 400 U.S. 455, (1971) )

As observed by the court in *Mayberry*, "Generalizations are difficult." *Id.* at 462. It appears, however, that the conduct involved in this case was not so flagrant as to provoke intemperance in the Trial Judge, nor did the relationship degenerate to one of adversary confrontation.

In this regard, it is noted that the references by petitioner to articles in the Lake Charles American Press constitute references to materials which are outside of the record in this proceeding and which report events that took place after the determination on this contempt rule. The newspaper stories are primarily hearsay detailing of events and would hardly be admissible under any circumstances.



The sole issue for consideration here is whether the Trial Judge, having delayed action on the direct contempt of petitioner in order to permit petitioner an opportunity to be heard orally by way of defense and mitigation, was then constitutionally required to step aside and allow the contempt proceeding to be conducted before another Judge. We think the decisions of this Court answer the question in the negative.

In *Sacher v. U.S.*, 343 U.S. 1 (1952), Mr. Justice Jackson wisely observed:

> "If we were to hold that summary punishment can be imposed only instantly upon the event, it would be an incentive to pronounce, while smarting under the irritation of the contemptuous act, what should be a well-considered judgment. We think it less likely that unfair condemnation of counsel will occur if the more deliberate course be permitted."

As recognized by this court in *Mayberry:*

> "It is, of course, not every attack on a Judge that disqualifies him from sitting."

Ours is not a case of continued insolent conduct. It is not one of a nature to arouse undue passions or prejudices in the Judge. It is not one in which the prescribed procedure was abused. It is not one in which any excessive fine or punishment was imposed. Petitioner has not shown any justification for his assertion that the Trial Judge should have recused himself from con-

duct of the hearing at which the trial Judge afforded him the opportunity of being heard orally by way of defense or mitigation.

The traditional rule that a Trial Judge need not recuse himself from a contempt proceeding to punish a direct contempt committed in his presence if he does not immediately impose sentence carries with it the substantial justification expressed in *Sacher*, that is, where there is no indication the Judge has become personally embroiled, he may afford the contempt nor an opportunity to be heard in defense and mitigation, and may act with cool deliberation and with benefit of hindsight, and not be put in the position of having to make a "snap" decision on an important matter.

The rule has further logical support. Requiring a contempt proceeding to be tried before another Judge in the case of a direct contempt, but not one so as to enflame the prejudice or passion of the Trial Judge, encourages the court to take an adversary position. The Judge before whom the contempt was committed must then become an advocate of the dignity of the court and must assume an adversary position with regard to the party accused of contemptuous conduct. On balance, a rule permitting the Trial Judge to impose a penalty for a direct contempt only if he acts immediately puts that Judge in the position of *reacting* immediately, rather than *acting deliberately* after passions have cooled and explanations have been made, and forces him to do so on pain of becoming an adversary in a separate judicial proceeding.



**Due Process**

Petitioner raises as his second question the following:

> "When an alleged contempt has been committed by an attorney in the presence of the Trial Judge and the Trial Judge proceeds by rule to show cause to punish for contempt whether, due process requires that the attorney be given an opportunity to employ counsel, subpoena witnesses, and prepare a defense, consistent with the Sixth Amendment guarantee of effective assistance of counsel and the Fourteenth Amendment's guarantee of due process of law?"

First, as regards petitioner's complaint that he was not told of the nature of the proceedings against him, the transcript reflects that during the course of the hearing, and at the time when petitioner first asked the court under what authority he was being held in direct contempt of court, the court responded to the questions as follows:

> "Mr. Carter: Excuse me, Your Honor, I asked that the Court, in regards to — the Court has already indicated that I'm being held in direct contempt. Is that correct?
>
> The Court: That is absolutely correct.
>
> Mr. Carter: Will the Court venture to tell me under what section that direct contempt statute — Article 21 of the Code of Criminal Procedure, what paragraph I've been held —
>
> The Court: You've got the wrong book, Mr. Carter.

Mr. Carter: Code of Criminal Procedure — Code of Civil Procedure?

The Court: Yes, sir.

Mr. Carter: Under what section, what paragraph?

The Court: Article 224, sub-section — excuse me, 222, subsection 1."

With regard to the remainder of petitioner's argument under this question, this court has not traditionally imposed the requirement of right to counsel where, as here, a direct contempt has been committed by an attorney and the possible penalty does not extend to substantial fine or imprisonment. Petitioner has not cited any decision of this court imposing such a requirement in a direct contempt case involving an attorney.

Insofar as the right to confront witnesses is concerned, there is no showing in the record that any witnesses to the contemptuous conduct other than petitioner, the Judge, his secretary and the attorney who was waiting to transact business with Judge, all of whom were called and testified at the hearing, offered petitioner by way defense and mitigation.

Petitioner committed what the Louisiana Statute defines as a direct contempt of the court by contumacious, insolent and disorderly behavior toward the Judge while the Judge was exercising a function of the court. Petitioner has not attacked the constitutionality of the direct contempt statute at issue, nor of the statute prescribing the procedure for



punishing, which permits subsequent hearing by way of defense or mitigation. The cases cited by petitioner are not relevant because they deal either with a definition of direct contempt limited to contempts committed in open court or with contempt cases involving major punishments, both of which this court has subjected to different rules.

Notice

Petitioner raises as the third question in connection with his application of writ of certiorari, the following:

"May a conviction for contempt be sustained where the Trial Judge did not give contempt nor timely notice of the specific conduct that forms the basis of the contempt prior to the hearing of the contempt rule, and where the Trial Judge never in his contempt proceedings stated the specific contumacious conduct that forms the basis of the contempt charge?"

Petitioner is in error in stating that he was convicted under the provisions of Louisiana Code of Civil Procedure, Article 225. As set forth earlier, petitioner was advised that he was in direct contempt of court under the provisions of Louisiana Code of Civil Procedure, Article 222, and the procedure for punishing him under that Article was the procedure specified in Louisiana Code of Civil Procedure, Article 223. Both of those Articles have been cited above for the court.

A review of petitioner's brief leaves no doubt that he was aware that his calling the Judge a racist was a basis for the contempt proceeding.

Petitioner has not directed the attention of this Court to any decision by which it has required specification of the charges in connection with a direct contempt proceeding, delayed only a short time to permit the party being held in contempt to be heard by way of defense or mitigation.

The closing statement of petitioner made before Judge Hawsey on December 8, 1977, at the hearing held to afford him an opportunity to present matters by way of defense and mitigation contained the following language:

> "I said, Your Honor, I think I know why, and I wasn't hollering. I said, I think I know why you're behaving this way. I think it's because you have a reason for it, and your reason is that you're a racist, and I didn't really say it loud, and I said it because at that time, I felt that the Judge was being exceptionally peculiar and particular with me as he have been with other attorneys, as he have been with me in the past. So, at that point, the Judge said, call the Sheriff's Department, and I walked out from the Judge's office and went immediately across upstairs to — I believe I saw Mr. Gillard, Ray Gillard, and I told him that I was going to have to go down and post or sign a recognizance bond of some sort, sign some sort of recognizance or a bond, and he walked



> down across the street to the jail with me, and I signed a bond."

Petitioner used contemptuous language to the Trial Judge in chambers to provoke a confrontation and hopefully a discussion of what he perceived to be differences with the Judge, under the mistaken belief that he was protected since the remarks were not made in open court. That mistake does not relieve him of the contemptuous nature of his words or free him from any of the strictures of direct contempt. He was aware of his provocation, he was given an opportunity to be heard by way of defense and mitigation.

**Direct Or Constructive Contempt**

Petitioner raises as his question four, the following:

> "Whether the obstructive conduct of petitioner which forms the basis of contempt charges can be punishable as contempt when said conduct occurred out of the court's presence and hearing while court was not in session or recess?"

The Louisiana Statute under which petitioner was found in direct contempt has not been challenged by petitioner as being unconstitutional. He has demonstrated no constitutional prohibition against defining a direct contempt of court to include "contumacious, insolent, or disorderly behavior toward the Judge" as provided in the cited statute.

The statute very definitely and particularly defines conduct which may constitute a direct contempt. There is no question that the contemptuous conduct in this case falls within the definition of direct contempt. Petitioner's conduct in this case may be considered either "contumacious, insolent, or disorderly behavior toward the Judge" or "breach of the peace, boisterous conduct, or violent disturbance tending to interrupt or interfere with the business of the court". It was not committed in open court. It was committed before the Judge in chambers while he was performing duties assigned him by the court, duties required as a function of the court. The statute simply does *not* limit direct contempt to contempt committed only in open court.

The cases cited by petitioner in support of his argument on this question are not applicable. *Bland v. Kennamer*, 6 Fed. Rptr. 2d 130 (8th Cir. 1925) dealt with the definition of the term "court" within the context of a specific statute and has nothing to do with contempt. *Bosworth v. Marshall*, 176 SW 348, similarly deals only with a general definition of the term "court".

*Louisiana Educational Assn. v. Richland Parish School Board*, 421 F.Supp. 973 (W.D. La. 1976) dealt with a constructive contempt for an alleged violation of an order of a Federal District Court committed by a party to an order which the court had issued. It is neither factually or legally applicable to this case. *State ex rel. Collins v. Collins*, 110 So.2d 545 (La.Sup.Ct. 1959) similarly dealt with a constructive contempt of a state court order committed by one of the parties to a child custody proceeding. It is not factual-



ly or legally applicable to this case. Petitioner relies on the distinction drawn by that court between direct and constructive contempts where the Supreme Court stated that:

> "The direct contempt is committed in the presence of the court and consists of words spoken or acts committed while the court is in session, or during its intermissions, which tend to subvert, embarrass or prevent justice."

It is very important to note, however, that the *Collins* case was decided in 1959, and the offending conduct took place in 1958. The Louisiana Code of Civil Procedure, including Article 222, was enacted by the Louisiana Legislature in 1959 and became effective on January 1, 1960. Thus, the *Collins* case did not purport to interpret the definition of contempt under which the instant case is being considered.

The same observation pertains to petitioner's citation of *State ex rel. Stewart v. Reid*, 43 So. 447 (Sup.Ct.La. 1907), obviously a case decided prior to the enactment of Louisiana Code of Civil Procedure, Article 222.

Petitioner's citation to 28 U.S.C.A. Section 459 and an unnamed case at 11 F.2d 713 are also inapplicable. We are dealing here with a specific state statute defining contempt, a statute which has not been constitutionally attacked in this proceeding, and which clearly proscribes the offending conduct in this case. To reiterate, that statute does not require that contempt

occur in open court. On its face, it is applicable to the conduct at issue in the case at bar.

## ARGUMENT

In the case at bar, petitioner committed a direct contempt of court as defined by Louisiana Code of Civil Procedure, Article 222 by engaging in disorderly behaviour toward Judge Hawsey in chambers while Judge Hawsey was conducting official business of the court. That conduct tended to interfere with the business of the court and constituted a breach of the peace and boisterous conduct sufficient to impair the dignity of the court and respect for its authority. That conduct took place not only in the presence of the Judge, but of his secretary and another attorney waiting to do business with the court.

Rather than react in the heat of the moment, Judge Hawsey, realizing the petitioner's youth and inexperience, delayed imposition of a penalty for contempt less than 24 hours in order to permit petitioner to be heard orally by way of defense or mitigation. Petitioner came to the hearing, cross-examined the only witnesses to the contempt, and made a statement on his behalf, after which punishment in accordance with the applicable statutory provisions was imposed. Punishment was the maximum, $100.00 fine and one day in jail.

The decisions of this court with regard to contempt indicate that it is a subject to be approached carefully and deliberately, requiring a careful balancing of the interests in maintaining the dignity of the court and



insuring that the power to punish summarily for contempt not be abused.

There should be no question that the conduct engaged in by petitioner, even according to his own version, was a direct contempt of court. The record fails to reflect that the contemptuous conduct constituted such a personal attack as to cloud the objectivity of the Trial Judge.

The facts of this case disclose no basis on which the delay of less than 24 hours in order to permit a hearing and to permit petitioner an opportunity to be heard by way of defense or mitigation imposed any more onerous burden on him than would have been imposed had the Trial Judge immediately opened court and imposed a similar sentence. Had that procedure been followed, in this case of an obvious direct contempt, presumably there would be no question at all of the propriety of the Trial Judge imposing the contempt punishment. Surely the very brief delay, which inured to petitioner's benefit by allowing him to be heard by way of defense and mitigation, cannot be said to have deprived him of any substantial right.

As argued earlier, requiring an instant punishment by the Trial Judge in order to avoid an adversary hearing before another Judge, can only encourage the Trial Judge to react, rather than act, encouraging snap decisions on matters which may require cool reflection, in order to avoid the possibility of becoming embroiled in further conflict.

## CONCLUSION

The contempt decisions by this Court establish rules for various categories of contempt cases. Where the contemptuous conduct is repeated throughout the course of a trial and serious penalties are imposed, the contempt proceedings should be heard by a Judge other than the one before whom the contempts were committed. *Mayberry v. Pennsylvania*, 400 U.S. 455.

Where the contemptuous conduct embroils the Trial Judge into the extent that he becomes an activist seeking combat, another Judge should hear the contempt proceeding. *Offutt v. U.S.*, 348 U.S. 11 (1954).

In the case of "limited" punishment, a direct contempt committed by an attorney need not be punished immediately, but the court may allow a short period for consideration without requiring that the Judge before whom the contempt was committed step aside. *Sacher v. U.S.*, 343 U.S. 1 (1952).

It is interesting to note that the *Sacher* rationale has been applied by lower Federal courts. In *Greene v. Tucker*, 375 F.Supp. 892 (E.D. Va. 1974), petitioner appealed from a contempt sentence of ten days in jail and a $500.00 fine. Petitioner was an attorney practicing before the Bar who refused to proceed with the trial of a case scheduled for trial, in the face of an order by the District Judge, because he felt the Jury Venire was improperly constituted. He was cited for contempt during the course of the trial, but a hearing was not held, nor punishment imposed, until the conclusion of that trial several days later.



The court held that the case was subject to disposition by the Trial Judge on the authority of *Sacher*, saying further:

> "The exception to the general requirement of a full fact-finding hearing in cases of contempt committed 'directly under the eye or within the view of the court' is not grounded solely in the need for immediate vindication of the Court's integrity, but also supported by the fact that 'there is no need of evidence or assistance of counsel before punishment, because the court has seen the offense'. *Cooke v. United States*, 267 U.S. 517, 534, 45 S.Ct. 390, 394, 69 L.Ed. 767 (1925). See 8a Moore's Federal Practice, Paragraph 42.02[3]. In such a case, the court may 'proceed upon its own knowledge of the facts and punish the offender, without further proof, and without issue or trial in any form.' Ex parte Terry, 128 U.S. 289, 309, 9 S.Ct. 77, 81, 32 L.Ed. 405 (1888)."

Where there is no reasonable basis shown in a request for a continuance of a hearing on a motion for continuance, its denial does not represent a violation of due process. Thus, in *Ungar v. Sarafite*, 376 U.S. 575 (1964), this Court affirmed a conviction for contempt committed by a lawyer-witness and approved a refusal to grant a continuance, saying:

> "The matter of continuance is traditionally within the discretion of the trial judge, and it is not every denial of a request for more time

that violates due process even if the party fails to offer evidence or is compelled to defend without counsel."

Applying those principles to the case at bar, we find a direct contempt committed by an attorney in the presence of the Trial Judge, the absence of any adversary relationship between the Trial Judge and the attorney as a result of the contemptuous language, and prompt punishment of the contempt after affording the attorney an opportunity to be heard by way of defense and mitigation. The conduct of the Trial Judge, duly reviewed by the Louisiana Supreme Court and approved by it, does not fail with regard to any of the constitutional tests previously announced by this Court. Application for writ should be rejected.

Respectfully submitted,

JAMES R. NIESET
Post Office Drawer 1705
Lake Charles, LA 70602



## CERTIFICATE OF SERVICE

I hereby certify that three true and correct copies of the above and foregoing Brief in Opposition have this day been mailed, postage prepaid, to Antoine Laurent, 1025 Mill Street, Lake Charles, LA 70601 and Louis Guidry, 700 Enterprise Blvd., Lake Charles, LA 70601.

This ____ day of May, 1978.

Of Counsel